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**Skating Rink Denied Summary Judgment;
Barricade Fell Outside Normal Risks Associate With Skating**

A Supreme Court Justice has refused a roller skating rink's motion to have a personal suit dismissed despite their argument that the plaintiff assumed the risk of injury. Kings County Supreme Court Justice Herbert Kramer denied defendant United Skates of America's motion for summary judgment for injuries sustained by an 8-year old roller skater for injuries he sustained while roller skating at the defendant's rink. The court held that, "in general, a person who is injured while voluntarily participating in a sporting event has no legal recourse if his injuries were caused by an occurrence or condition which was a known, apparent or reasonably foreseeable consequence of the participation." Despite the weight of this legal precedent, the court ruled that the plaintiff's injuries were caused by the negligent placement of a wooden barrier at one of the entrances to the rink. The wooden barrier fell outside of the normal risks associated with roller skating and presented an almost "irresistible challenge" to young roller skaters. The Court held that "questions of fact exist as to whether the defendants fulfilled their duty of care to their young skaters and whether this young plaintiff after himself having previously skated under this bar without incident and having watched others do so as well, so clearly appreciated the risk such that it can be held that he assumed the risk as a matter of law."

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[*1] Kahlil Lewin, an infant by his parent and natural guardian of LAKISHA THOMPSON and LAKISHA THOMPSON, Individually, Plaintiffs, against United Skates of America, Inc., UNITED SKATES OF AMERICA, INC. d/b/a EMPIRE ROLLER SKATING CENTER and BROOKLYN SKATING, LLC., Defendants.

8546/07

SUPREME COURT OF NEW YORK, KINGS COUNTY

2009 NY Slip Op 51627U; 2009 N.Y. Misc. LEXIS 1987

July 28, 2009, Decided

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COUNSEL: [**1] For Plaintiff: Gary P. Kauget, PC, Brooklyn, NY.

For Defendants: Charles J. Siegel, Esq., NY, NY.

JUDGES: Herbert Kramer, J.

OPINION BY: Herbert Kramer

OPINION

Herbert Kramer, J.

The infant plaintiff, who was then eight years old, was injured when he skated underneath a board that partially blocked an entrance to the general skating area. The plaintiff had gone under the wood twice before the accident happened. When he got hurt he was going under the wood because he wanted to go around faster and get ahead of someone else. He had seen other kids do it. A skating guard told him not to skate under the board. There were other open entrances to the general skating area.

Defendant moves for summary judgment arguing that the plaintiff, who his mother described as a "good skater," and who was warned not to skate under the board, assumed the risk of this accident.

"In general, a person who is injured while voluntarily participating in a sporting event has no legal recourse if his injuries were caused by an occurrence or condition which was a known, apparent or reasonably foreseeable consequence [] of the participation'. Relieving an owner or operator of a sporting venue of liability for inherent risks of engaging in a sport [**2] is justified when a consenting participant is aware of the risks, has an appreciation of the nature of the risks, and voluntarily assumes the risks. A premises owner continues to owe a duty to exercise care to make the conditions as safe as they appear to be. If the risks of the activity are fully comprehended or perfectly obvious, the plaintiff has consented to them and the defendant has performed its duty. Additionally, the application of the assumption of the risk doctrine in assessing the duty of care owed by an owner or operator of a sporting facility requires that the [*2] participant have not only knowledge of the injury-causing defect but also appreciation of the resultant risk, but awareness of risk is not to be determined in a vacuum. It is, rather to be assessed against the background of the skill and experience of the particular plaintiff." *Blanco v. Elmont Union Free School District*, 179 Misc 2d 918, 687 N.Y.S.2d 235 (NY Sup 1999).

By roller skating, the plaintiff consented to those risks commonly associated with roller skating. However, the location of the wooden barricade falls outside the normal risks associated with skating because its placement and its apparent use by other children on [**3] the rink could well be found to have presented a near irresistible challenge to young skaters who enjoy showing off their prowess and testing their skills. Indeed, consistent with a landowner's duty to prevent foreseeable injuries . . . the degree of care to be exercised must take into account the known propensity' of children to roam and climb and play.' Notably [w]hat accidents are reasonably foreseeable, and what preventative measures should reasonably be taken, are ordinarily questions of

fact.'" *Dunbar v. NMM Glens Falls Associates, LLC*, 263 AD2d 865, 693 N.Y.S.2d 746 (3d Dept.1999).

Here it can well be said that questions of fact exist as to whether the defendants fulfilled their duty of care to their young skaters and whether this young plaintiff after himself having previously skated under this bar without incident and having watched others do so as well, so clearly appreciated the risk such that it can be held that he assumed the risk as a matter of law. See e.g., *Alessi v. Boy Scouts of America Greater Niagra Frontier Council, Inc.*, 247 AD2d 824, 668 N.Y.S.2d 838 (4th Dept. 1998).

The defendant's motion is denied.

This constitutes the decision and order of the Court.

